



February 10, 2009

SENATE BILL No. 133

DIGEST OF SB 133 (Updated February 6, 2009 2:30 pm - DI yl)

Citations Affected: IC 34-24; IC 35-45; noncode.

Synopsis: Terrorism. Makes it assisting an act of terrorism, a Class C felony, for a person to allow another person to obtain access to or otherwise use real or personal property owned or under the control of the person if the person: (1) knows that the other person is using or will use; or (2) intends that the other person use or will use; the real or personal property to promote, facilitate, prepare to commit, or commit an act of terrorism.

Effective: July 1, 2009.

Wyss

January 7, 2009, read first time and referred to Committee on Rules and Legislative Procedure.

February 9, 2009, amended; reassigned to Committee on Corrections, Criminal and Civil Matters.

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SB 133—LS 6431/DI 13+



February 10, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 133

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-24-1-1, AS AMENDED BY P.L.114-2008,
2 SECTION 27, AND AS AMENDED BY P.L.119-2008, SECTION 13,
3 IS CORRECTED AND AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The following may be seized:

5 (1) All vehicles (as defined by IC 35-41-1), if they are used or are
6 intended for use by the person or persons in possession of them to
7 transport or in any manner to facilitate the transportation of the
8 following:

9 (A) A controlled substance for the purpose of committing,
10 attempting to commit, or conspiring to commit any of the
11 following:

12 (i) Dealing in or manufacturing cocaine or a narcotic drug
13 (IC 35-48-4-1).

14 (ii) Dealing in methamphetamine (IC 35-48-4-1.1).

15 (iii) Dealing in a schedule I, II, or III controlled substance
16 (IC 35-48-4-2).

17 (iv) Dealing in a schedule IV controlled substance

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- 1 (IC 35-48-4-3).
 2 (v) Dealing in a schedule V controlled substance
 3 (IC 35-48-4-4).
 4 (vi) Dealing in a counterfeit substance (IC 35-48-4-5).
 5 (vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
 6 (viii) Possession of methamphetamine (IC 35-48-4-6.1).
 7 (ix) Dealing in paraphernalia (IC 35-48-4-8.5).
 8 (x) Dealing in marijuana, hash oil, or hashish
 9 (IC 35-48-4-10).
 10 (B) Any stolen (IC 35-43-4-2) or converted property
 11 (IC 35-43-4-3) if the retail or repurchase value of that property
 12 is one hundred dollars (\$100) or more.
 13 (C) Any hazardous waste in violation of ~~IC 13-30-10-4~~.
 14 *IC 13-30-10-1.5*.
 15 (D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass
 16 destruction (as defined in IC 35-41-1-29.4) used to commit,
 17 used in an attempt to commit, or used in a conspiracy to
 18 commit an offense under IC 35-47 as part of or in furtherance
 19 of an act of terrorism (as defined by IC 35-41-1-26.5).
 20 (2) All money, negotiable instruments, securities, weapons,
 21 communications devices, or any property used to commit, used in
 22 an attempt to commit, or used in a conspiracy to commit an
 23 offense under IC 35-47 as part of or in furtherance of an act of
 24 terrorism or commonly used as consideration for a violation of
 25 IC 35-48-4 (other than items subject to forfeiture under
 26 IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):
 27 (A) furnished or intended to be furnished by any person in
 28 exchange for an act that is in violation of a criminal statute;
 29 (B) used to facilitate any violation of a criminal statute; or
 30 (C) traceable as proceeds of the violation of a criminal statute.
 31 (3) Any portion of real or personal property purchased with
 32 money that is traceable as a proceed of a violation of a criminal
 33 statute.
 34 (4) A vehicle that is used by a person to:
 35 (A) commit, attempt to commit, or conspire to commit;
 36 (B) facilitate the commission of; or
 37 (C) escape from the commission of;
 38 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 39 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 40 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense
 41 under IC 35-47 as part of or in furtherance of an act of terrorism.
 42 (5) Real property owned by a person who uses it to commit any of

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the following as a Class A felony, a Class B felony, or a Class C felony:

(A) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(B) Dealing in methamphetamine (IC 35-48-4-1.1).

(C) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(D) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(E) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(10).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment, *used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4-4, including computer equipment and cellular telephones, used for or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4.*

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47-5.

(12) Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.

(13) Property used by a person to commit counterfeiting or forgery in violation of IC 35-43-5-2.

(14) After December 31, 2005, if a person is convicted of an offense specified in IC 25-26-14-26(b) or IC 35-43-10, the following real or personal property:

(A) Property used or intended to be used to commit, facilitate, or promote the commission of the offense.

(B) Property constituting, derived from, or traceable to the gross proceeds that the person obtained directly or indirectly

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as a result of the offense.

(15) Except as provided in subsection (e), a motor vehicle used by a person who operates the motor vehicle:

(A) while intoxicated, in violation of IC 9-30-5-1 through IC 9-30-5-5, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction; or

(B) on a highway while the person's driver's license is suspended in violation of IC 9-24-19-2 through IC 9-24-19-4, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction.

If a court orders the seizure of a motor vehicle under this subdivision, the court shall transmit an order to the bureau of motor vehicles recommending that the bureau not permit a motor vehicle to be registered in the name of the person whose motor vehicle was seized until the person possesses a current driving license (as defined in IC 9-13-2-41).

(16) All real or personal property, including a vehicle, that is used by a person to commit, attempt to commit, or conspire to commit assisting an act of terrorism under IC 35-45-1-5.

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action

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under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine or a narcotic drug).

(2) IC 35-48-4-1.1 (dealing in methamphetamine).

(3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(5) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a Class A felony, Class B felony, or Class C felony.

(7) IC 35-48-4-6.1 (possession of methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(8) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

(e) A motor vehicle operated by a person who is not:

(1) an owner of the motor vehicle; or

(2) the spouse of the person who owns the motor vehicle;

is not subject to seizure under subsection (a)(15) unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a)(15).

SECTION 2. IC 35-45-6-1, AS AMENDED BY P.L.3-2008, SECTION 253, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Documentary material" means any document, drawing, photograph, recording, or other tangible item containing compiled data from which information can be either obtained or translated into a usable form.

(c) "Enterprise" means:

(1) a sole proprietorship, corporation, limited liability company, partnership, business trust, or governmental entity; or

(2) a union, an association, or a group, whether a legal entity or merely associated in fact.

(d) "Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering activity that have the same or similar intent, result, accomplice, victim, or method of commission, or that are otherwise interrelated by distinguishing characteristics that are not

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isolated incidents. However, the incidents are a pattern of racketeering activity only if at least one (1) of the incidents occurred after August 31, 1980, and if the last of the incidents occurred within five (5) years after a prior incident of racketeering activity.

(e) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit a violation of, or aiding and abetting in a violation of any of the following:

- (1) A provision of IC 23-19, or of a rule or order issued under IC 23-19.
- (2) A violation of IC 35-45-9.
- (3) A violation of IC 35-47.
- (4) A violation of IC 35-49-3.
- (5) Murder (IC 35-42-1-1).
- (6) Battery as a Class C felony (IC 35-42-2-1).
- (7) Kidnapping (IC 35-42-3-2).
- (8) Human and sexual trafficking crimes (IC 35-42-3.5).
- (9) Child exploitation (IC 35-42-4-4).
- (10) Robbery (IC 35-42-5-1).
- (11) Carjacking (IC 35-42-5-2).
- (12) Arson (IC 35-43-1-1).
- (13) Burglary (IC 35-43-2-1).
- (14) Theft (IC 35-43-4-2).
- (15) Receiving stolen property (IC 35-43-4-2).
- (16) Forgery (IC 35-43-5-2).
- (17) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(10)).
- (18) Bribery (IC 35-44-1-1).
- (19) Official misconduct (IC 35-44-1-2).
- (20) Conflict of interest (IC 35-44-1-3).
- (21) Perjury (IC 35-44-2-1).
- (22) Obstruction of justice (IC 35-44-3-4).
- (23) Intimidation (IC 35-45-2-1).
- (24) Promoting prostitution (IC 35-45-4-4).
- (25) Professional gambling (IC 35-45-5-3).
- (26) Maintaining a professional gambling site (IC 35-45-5-3.5(b)).
- (27) Promoting professional gambling (IC 35-45-5-4).
- (28) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).
- (29) Dealing in or manufacturing methamphetamine (IC 35-48-4-1.1).
- (30) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

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(31) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(32) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(33) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(34) Money laundering (IC 35-45-15-5).

(35) A violation of IC 35-47.5-5.

(36) Assisting an act of terrorism (IC 35-45-1-5).

SECTION 3. IC 35-45-1-5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 5. A person who:**

(1) knowingly, intentionally, or recklessly allows another person to obtain access to or otherwise use real or personal property owned or under the control of the person; and

(2) either:

(A) knows that the other person is using or will use; or

(B) intends that the other person use or will use;

the real or personal property to promote, facilitate, prepare to commit, or commit an act of terrorism;

commits assisting an act of terrorism, a Class C felony.

SECTION 4. [EFFECTIVE JULY 1, 2009] **This act applies only to crimes committed after June 30, 2009.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 133, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Corrections, Criminal and Civil Matters.

(Reference is to SB 133 as introduced.)

LONG, Chairperson

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